

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



M1

FILE: [REDACTED]
[EAC 04 186 53210]

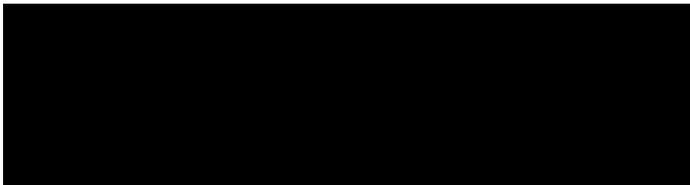
OFFICE: VERMONT SERVICE CENTER

Date: **MAR 22 2006**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish that he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel for the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

- (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present since January 5, 1999. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until July 5, 2006, upon the applicant's re-registration during the requisite period.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on March 21, 2001. The Director of the Texas Service Center denied that application on June 14, 2002, due to abandonment because the applicant failed to respond to a request for additional evidence dated April 10, 2002. The director informed the applicant that there is no appeal from a denial due to abandonment, but that he could file a request to reopen the case within 33 days. The applicant failed to file a motion to reopen the case.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on June 7, 2004.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On July 19, 2004, the applicant was requested to submit evidence establishing his eligibility for late initial registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The record does not contain a response from the applicant.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on September 10, 2004.

On appeal, counsel for the applicant asserts that the applicant qualifies for late initial registration because “he was a nonimmigrant, entering without inspection, . . . and without the benefit of an immigrant visa petition.”

The applicant specifically stated on his Form I-821 that he entered the United States without inspection. He was never admitted to the United States in valid nonimmigrant status. Therefore, he does not qualify for late initial registration on this basis.

The record reveals that the applicant filed a Form I-589, Request for Asylum in the United State, on February 14, 1989. The record indicates that he withdrew his asylum request on the same day, and he was granted the privilege of voluntary departure from the United States on or before March 17, 1989. There is no indication that the applicant ever departed the United States in compliance with the grant of voluntary departure.

The applicant does not qualify for late initial registration based on a pending asylum application because his asylum application was administratively terminated on February 14, 1989, almost ten years prior to the initial registration period for Hondurans.

The applicant, on appeal, submits evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Form I-821 within the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999.

The applicant has previously submitted the following evidence in support of his TPS application:

1. a photocopy of his Virginia Driver's License (date of issuance illegible); and,

2. a photocopy of a photo employee identification card issued to the applicant by Fellsmere Farms, in Fellsmere, Florida, on August 21, 2000.

As stated above, the applicant was requested on July 19, 2004 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The record does not contain a response from the applicant.

The director concluded that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application.

On appeal, the applicant submits the following:

3. a photocopy of a billing statement from Jones Communications in Baltimore, Maryland, for the billing period from June 1, 1999 to June 30, 1999;
4. a photocopy of a "Notice to Pay" from Presidential Greens Apartments in Alexandria, Virginia, dated July 6, 1999;
5. a photocopy of an AT&T bill dated August 23, 1998;
6. photocopies of earnings statements from Pine Ridge Landscaping in Chantilly, Virginia, dated: August 20, 1998; October 9, 1998; November 20, 1998; April 9, 1999; April 23, 1999; and, May 14, 1999; and,
7. a photocopy of a Form I-797 notice dated April 1, 1997, acknowledging receipt of a Form I-130, Immigrant Petition for Relative, Fiance(e), or Orphan, filed on the applicant's behalf by [REDACTED] the applicant's sister (A29 401 172), along with a photocopy of an approval notice dated December 12, 1997 relating to the Form I-130 filed on the applicant's behalf by [REDACTED]

The AT&T bill (No. 5 above), the earnings statements dated August 20, October 9, and November 20, 1998, (No. 7 above), and the notices relating to the Form I-130 petition (No. 7 above) predate the requisite periods to establish continuous residence and continuous physical presence in the United States. The applicant's Virginia Driver's License (No. 1 above) has no probative value because the date of issuance is illegible.

The applicant has submitted evidence reflecting his residence and physical presence in the United States during the period from April through June 1999 and from March 2001 through June 14, 2002, but he has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.